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AZ CORP COMMISSION
DOCKET CONTROL

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BEFORE THE ARIZONA CORPORATION COMMISSION

DOUG LITTLE
CHAIRMAN

BOB STUMP
COMMISSIONER

BOB BURNS
COMMISSIONER

TOM FORESE
COMMISSIONER

ANDY TOBIN
COMMISSIONER

**IN THE MATTER OF THE
APPLICATION OF ARIZONA PUBLIC
SERVICE COMPANY FOR A
HEARING TO DETERMINE THE FAIR
VALUE OF THE UTILITY PROPERTY
OF THE COMPANY FOR
RATEMAKING PURPOSES, TO FIX A
JUST AND REASONABLE RATE OF
RETURN THEREON, TO APPROVE
RATE SCHEDULES DESIGNED TO
DEVELOP SUCH RETURN.**

DOCKET NO. E-01345A-16-0036

DOCKET NO. E-01345A-16-0123

Arizona Corporation Commission

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**IN THE MATTER OF FUEL AND
PURCHASED POWER
PROCUREMENT AUDITS FOR
ARIZONA PUBLIC SERVICE
COMPANY.**

**EMERGENCY MOTION TO
COMPEL PRODUCTION OF
REPORT REGARDING RATE
IMPACT**

Energy Freedom Coalition of America, LLC ("EFCA") requests the Commission compel Arizona Public Service Company (the "Company") to produce a report the Company commissioned regarding its customers' reactions to rate changes. The document exists and is highly responsive to a data request. Nonetheless, and with no legitimate justification, the Company has refused to provide EFCA with an actual copy of the report, instead severely restricting EFCA's access to and ability to use the document by requiring EFCA to review it in isolation, at the Company's facilities, under the Company's supervision. These restrictions unfairly constrict and

1 prejudice EFCA's ability to prepare its case, including most urgently its ability to prepare for
2 witness depositions. The Company should be compelled to provide EFCA with an actual copy of
3 the report, as it must with any responsive document.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 The Company's controversial and unprecedented rate proposal seeks to impose demand
6 charges on approximately one million Arizonans. In addition, the Company proposes abolishing
7 net metering and requiring all future distributed generation solar ("DG") customers to take service
8 only under the most onerous of its new mandatory residential rate structures with the highest
9 demand charges and the lowest volumetric rates.

10 The Company conducted an undisclosed study on how rate changes would impact DG in
11 Arizona. It then presented Barbara Lockwood's pre-filed testimony touching on the same issue.

12 To prepare for Ms. Lockwood's deposition, EFCA sent the Company the following data
13 requests:

14 **Data Request 7.5** – Please provide any and all studies or analysis performed by or
15 for the Company or that the Company knows to exist that attempt to predict or in
16 any way analyze the impact of the Company's rate proposal (or any part thereof)
on the future rate of adoption of DG.

17 **Data Request 7.6** - Please provide any and all studies or analysis performed by or
18 for the Company or that the Company knows to exist that attempt to predict or in
19 any way analyze the impact of the Company's rate proposal (or any part thereof)
on the future economics of DG to the customer or to the solar provider.

20 The Company does have a report addressing "the impact of the Company's rate proposal" on the
21 "future rate of adoption of DG" – the result of the undisclosed study noted above, on how rate
22 changes would impact DG in Arizona. The Company admits the report exists and does not deny it
23 is responsive to EFCA's requests.

24 However, the Company refuses to provide EFCA with a copy of the report, as the Rules
25 require. The Company grounds its refusal to comply with the Rules on its assertion that the report
26 is "competitively confidential." Instead of complying with its discovery obligations by providing
27 the report that it identified, the Company unilaterally imposed an eyes-only, in-person inspection
28 restriction on this report.

1 The Company had no basis for this unilateral restriction. In fact, on November 18, 2016,
2 four days after the Company served objections, the Company and EFCA stipulated to a standard
3 protective agreement with a procedure to protect “highly confidential” information that “could be
4 used to gain a competitive market advantage.”¹ This classification limits review to designated
5 attorneys and experts, prohibits broader disclosure of highly confidential documents, and provides
6 for using them under seal in Commission proceedings. But it does not permit the Company to limit
7 review of any documents to eyes-only, on-site inspection. Nowhere does the protective agreement
8 provide any basis for requiring in-person review of any documents.

9 Nonetheless, during personal consultation about this report, the Company reneged on the
10 protective agreement and renewed its insistence on eyes-only, in-person inspection. Although
11 EFCA initially acquiesced to the Company’s in-person inspection requirement, in hopes of
12 avoiding another discovery dispute, EFCA’s review confirmed the report’s crucial importance.
13 EFCA’s counsel needs consistent and predictable access to the report to prepare for deposition,
14 witness testimony, and the hearing.

15 After conducting an in person inspection, EFCA personally consulted again with the
16 Company and requested that the Company provide a copy of the report. In fact, the Company will
17 not make it available for Ms. Lockwood’s deposition in any way unless EFCA signs an agreement
18 legitimizing its in-person, eyes-only restriction.

19 Even though EFCA doubts any part of the report deserves confidential treatment, EFCA
20 suggested the Company disclose it subject to a “highly confidential” designation, but the Company
21 would not compromise.

22 The Company’s intransigence presents the following issue: The civil rules and
23 Commission regulations exist to facilitate efficient exchange of information. May the Company
24 unilaterally restrict EFCA’s ability to prepare its case by forcing EFCA’s counsel to make an
25 appointment, drive to Company offices, and study documents during limited times while being
26 monitored by the Company?

27 //

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¹ Ex. 1 (Protective Agreement) at 4.

1 **I. Projected economic consequences are not confidential.**

2 Some circumstances may legitimately require the balancing of discovery with competitive
3 concerns. Competitive confidentiality claims typically focus on trade secrets or other information
4 a protecting party relies on to compete.² In other words, business information may qualify as
5 competitively confidential or trade secret if its owner maintains its secrecy and derives a
6 competitive advantage by keeping it secret.³ The stipulated protective agreement recognizes a
7 similar standard.

8 If a company intentionally keeps prices secret to avoid undercutting by its competition, for
9 example, the secret prices may be competitively confidential.⁴ But the Company does not do that:
10 the Commission regulates the Company's prices and publishes approved rates. Not only did the
11 Company publicly reveal its rate proposal in this proceeding, but it hosted public sessions to
12 publicly explain that proposal.

13 Economic fallout from the Company's rates is public, too. This Commission openly and
14 vigorously debates rate structures regularly, and publicly, often touching upon economic
15 consequences of a rate structure.

16 The Company does not and cannot claim it will suffer competitive harm if it releases the
17 report. Indeed, it has not even alleged any harm that would result to anyone were the Company to
18 produce the report in full, in public. Instead, it claims *some* third-party solar providers may gain
19 an advantage over *other* third-party solar providers—not over the Company—if the Company
20 were to disclose the report piecemeal.

21 There are many flaws in this position. First, of course, no one is asking the Company to
22 release the report piecemeal. Certainly EFCA is not. The Company is thus refusing to comply with
23 its discovery obligations out of an imaginary concern.

24 Second, the Company could avoid this alleged piecemeal problem simply by producing the
25 report, publicly, in its entirety at the same time it gives EFCA a copy. EFCA has no objection to
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28 ² *U S W. Communications, Inc. v. Wyoming Pub. Serv. Comm'n*, 992 P.2d 1092, 1096 (Wyo. 1999).

³ See, A.R.S. § 44-401.

⁴ See, e.g., *Sw. Stainless, LP v. Sappington*, 582 F.3d 1176, 1189 (10th Cir. 2009).

1 that. The Company's professed concern about disadvantaged third-party solar providers would be
2 completely addressed by full disclosure.

3 Third, the Company could simply avail itself of the "highly confidential" classification in
4 the existing protective agreement. On November 18, the Company and EFCA executed and filed
5 a stipulated protective order including separate protection for "confidential" and "highly
6 confidential" documents. The protective agreement stipulates that "highly confidential" protection
7 is sufficient for data that "could be used to gain a competitive market advantage."⁵

8 A party avails itself of "highly confidential" classification by placing a "highly
9 confidential" stamp on every highly confidential page. Once the party does that, review is limited
10 to designated attorneys and experts. The Company has a chance to object to any particular attorney
11 or expert reviewing the "highly confidential" information.⁶ It has a chance to submit that objection
12 to the Commission before a party discloses any highly confidential information to a "challenged
13 individual."

14 Absent order from this Commission, EFCA agrees to strict restrictions on highly
15 confidential data.

- 16 • It must restrict access to a limited number of attorneys and experts
- 17 • It cannot share the document with sales or marketing staff
- 18 • It cannot file the highly confidential document in the public portion of the record
- 19 • It cannot disclose the document to any unauthorized person

20 To be clear, EFCA does not agree the report qualifies for this level of protection and
21 reserves the right to later challenge this designation. However, merely putting the "highly
22 confidential" label on the document would have barred any public disclosure of the report absent
23 an order from this Commission. The Company has never explained why this protection, which it
24 negotiated and to which it agreed, is not sufficient.

25 Finally, it is strange that the Company rests its refusal to provide this report on hypothetical
26 concerns about competition between third-party solar providers. It is not the Company's
27 responsibility to govern competition, nor is a professed concern about an alleged possible impact

28 ⁵ Ex. 1 at 4.

⁶ Ex. 1 at 5.

1 on some third parties sufficient under the Rules to allow the Company to control how EFCA
2 prepares its case. The Company created the document and concedes its relevance and
3 responsiveness. The Rules accordingly govern its disclosure, not the Company's whims.

4 **II. EFCA needs a copy to prepare for deposition, witness testimony, and trial.**

5 The Civil Rules and this Commission's regulations exist to foster efficient exchange of
6 information. Rule 26(c) calls upon the tribunal to protect parties from "undue burden or expense."
7 A.A.C. R 14-3-108(A) empowers the Commission "expedite" the proceeding and discovery
8 process. Forcing EFCA to schedule review with the Company, as well as preventing it from using
9 even basic tools to assist in its review, violates the efficiency mandate.

10 It also violates the specific rules governing document production. Rule 34 lets parties
11 obtain a "copy" of the documents they request. EFCA needs a copy because the relationship
12 between that report and the Company's position in this case is now hotly contested. The Company
13 claims this report supports their position. EFCA will show the report undermines the Company's
14 position.

15 To prepare for this argument, EFCA needs to spend substantial time comparing the report
16 to other documents in this case. EFCA will compare the report to Ms. Lockwood's pre-filed
17 testimony, the Company's rate proposal, and Ms. Lockwood's eventual deposition testimony. All
18 of this work will be done by counsel.

19 EFCA also needs to prepare responsive materials. It needs to ensure experts adequately
20 address the report in their pre-filed testimony if necessary. To do that, EFCA needs regular and
21 flexible access to the report by its counsel and experts, including to compare the report and its draft
22 expert testimony side by side. This work is litigation work product, and it is highly inappropriate
23 for the Company to require EFCA to physically prepare work product at the Company's site and
24 to limit the times when EFCA can carry out its analysis and litigation preparation. Even worse,
25 during EFCA's initial review of the document, the Company required one of its employees to be
26 physically in the room with EFCA's attorney during review, making it impossible for EFCA's
27 counsel to have privileged communications with clients during his review. This intrusion into
28 EFCA's ability to prepare its case is astonishing, and completely without justification.

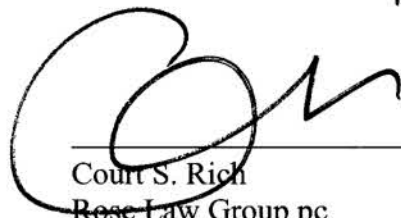
1 The report is responsive, and EFCA plans to vigorously litigate it as a part of its
2 presentation. Requiring EFCA's counsel to review the document at the Company's convenience,
3 and under its direct supervision, is extremely prejudicial to EFCA's ability to prepare for this trial.

4 **Conclusion**

5 The Company's unprecedented rate request has statewide and even national consequences.
6 Any attempt to forecast its economic effect deserves vigorous review. EFCA stands ready. It will
7 question the Company's principal witness with that report. It will prepare expert testimony
8 analyzing it. But it needs a copy to do its job.

9 EFCA requests the administrative law judge order the Company to deliver a copy of the
10 report to EFCA no later than December 13, 2015 so EFCA can use it to depose the Company's
11 executive witness. EFCA will not object to the Company disclosing the report as "highly
12 confidential," subject to EFCA's right to later seek relief from that designation pursuant to Section
13 5 of the protective agreement.

14
15 Respectfully submitted this ^{12th} day of December, 2016.

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18 

19 Court S. Rich
20 Rose Law Group pc
21 Attorney for Energy Freedom Coalition of America
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1 **Original and 13 copies filed on**
2 **the 17th day of December, 2016 with:**

3 Docket Control
4 Arizona Corporation Commission
5 1200 W. Washington Street
6 Phoenix, Arizona 85007

7 *I hereby certify that I have this day served a copy of the foregoing document on all parties of
8 record in this proceeding by regular or electronic mail to:*

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EXHIBIT 1

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 DOUG LITTLE - Chairman
4 BOB STUMP
5 BOB BURNS
6 TOM FORESE
7 ANDY TOBIN

8 IN THE MATTER OF THE APPLICATION
9 OF ARIZONA PUBLIC SERVICE
10 COMPANY FOR A HEARING TO
11 DETERMINE THE FAIR VALUE OF THE
12 UTILITY PROPERTY OF THE COMPANY
13 FOR RATEMAKING PURPOSES, TO FIX A
14 JUST AND REASONABLE RATE OF
15 RETURN THEREON, TO APPROVE RATE
16 SCHEDULES DESIGNED TO DEVELOP
17 SUCH RETURN.

DOCKET NO. E-01345A-16-0036

18 IN THE MATTER OF FUEL AND
19 PURCHASED POWER PROCUREMENT
20 AUDTIS FOR ARIZONA PUBLIC SERVICE
21 COMPANY.

DOCKET NO. E-01345A-16-0123

PROTECTIVE AGREEMENT

22 The Energy Freedom Coalition of America, LLC ("EFCA") has requested access to
23 certain documents, data, studies, and other materials, some of which Arizona Public Service
24 Company ("APS" or "Company") or its affiliates considers to be of a proprietary, confidential
25 or legally protected nature as defined below. Some of the Confidential Information that falls
26 within the scope of EFCA's request may also be considered by the Company to be Highly
27 Confidential Information, as defined below. APS also foresees the possibility of seeking
28 Confidential Information from EFCA during the course of this matter.

29 In order to facilitate the exchange of Confidential information between APS and
30 EFCA (collectively referred to as the "Parties"), including but not limited to, Highly
31 Confidential Information, the Parties agree to the terms of this Protective Agreement
32 ("Agreement") as follows:

1 **1. (a) Confidential Information.**

2 All documents, data, studies and other materials furnished pursuant to any
3 requests for information, subpoenas or other modes of discovery (formal or informal),
4 including depositions, and other requests for information, that are claimed to be proprietary or
5 confidential (herein referred to as "Confidential Information"), shall be so marked by the
6 providing party by stamping the same with a "Confidential" designation. Confidential
7 Information provided in a computer-readable data file shall be so-labeled on the face of any
8 disc containing the file and in any e-mail transmitting the file, and the data file itself shall be
9 identified in a conspicuous manner as containing "Confidential Information" to the extent
10 reasonably practicable. Moreover, to the extent responsive materials contain personally
11 identifiable information about individual customers, that information shall be redacted from
12 the materials. In addition, all notes or other materials that refer to, derive from, or otherwise
13 contain parts of the Confidential Information will be marked by the receiving party as
14 Confidential Information. Access to and review of Confidential Information shall be strictly
15 controlled by the terms of this Agreement.

16 **(b) Use of Confidential Information.** All persons who may be entitled to
17 review, or who are afforded access to any Confidential Information by reason of this
18 Agreement, shall neither use nor disclose the Confidential Information for purposes of
19 business or competition, or any purpose other than the purpose of preparation for and conduct
20 of proceedings in the above-captioned docket and all subsequent appeals, and shall keep the
21 Confidential Information secure as confidential or proprietary information and in accordance
22 with the purposes, intent and requirements of this Agreement.

23 **(c) Persons Entitled to Review.** Each party that receives Confidential
24 Information pursuant to this Agreement must limit access to such Confidential Information to
25 (1) attorneys employed or retained by the party in the proceedings and the attorneys' staff; (2)
26 experts, consultants and advisors, including in-house employees who need access to the
27 material to assist the party in the proceedings; (3) employees of the party who are directly
28 involved in the proceedings, provided that counsel for the party represents that no such

1 employee is engaged in the sale or marketing of that party's products or services.

2 (d) **Nondisclosure Agreement.** Any party, person, or entity that receives
3 Confidential Information pursuant to this Agreement shall not disclose such Confidential
4 Information to any person, except persons who are described in section 1(c) above and who
5 have signed a nondisclosure agreement in the form which is attached hereto and incorporated
6 herein as Exhibit "A."

7 The nondisclosure agreement for Confidential Information (Exhibit "A") shall require
8 the person(s) to whom disclosure is to be made to read a copy of the Protective Agreement
9 and to certify in writing that they have reviewed the same and have consented to be bound by
10 its terms. The agreement shall contain the signatory's full name, employer, job title and job
11 description, business address and the name of the party with whom the signatory is
12 associated. Such agreement shall be delivered to counsel for the producing party before
13 disclosure is made. An attorney who makes Confidential Information available to any person
14 listed in subsection (c) above shall be responsible for having each such person execute an
15 original of Exhibit "A" and a copy of all such signed Exhibit "A"s shall be sent to Company
16 promptly after execution.

17 2. (a) **Notes.** Limited notes regarding Confidential Information may be taken
18 by counsel and experts for the express purpose of preparing pleadings, cross-examinations,
19 briefs, motions and argument in connection with this proceeding, or in the case of persons
20 designated in section 1(c) of this Protective Agreement, to prepare for participation in this
21 proceeding. Such notes shall then be treated as Confidential Information for purposes of this
22 Agreement, and shall be destroyed after the final settlement or conclusion of the proceedings
23 in accordance with subsection 2(b) below.

24 (b) **Return.** All notes, to the extent they contain Confidential Information
25 and are protected by the attorney-client privilege or the work product doctrine, shall be
26 destroyed after the final settlement or conclusion of the proceedings. The party destroying
27 such Confidential Information shall advise the providing party of that fact within a reasonable
28 time from the date of destruction.

3. **Highly Confidential Information.** Any person, whether a party or non-party, may designate certain competitively sensitive Confidential Information as "Highly Confidential Information" if it determines in good faith that it would be competitively disadvantaged by the disclosure of such information to its competitors. Highly Confidential Information includes, but is not limited to, documents, pleadings, briefs and appropriate portions of deposition transcripts, which contain information that is protected by a pre-existing confidentiality agreement with a third party or could otherwise be used to obtain a competitive market advantage.

Parties must scrutinize carefully responsive documents and information and limit their designations as Highly Confidential Information to information that is directly covered by a pre-existing confidentiality agreement or otherwise truly might impose a serious business risk if disseminated without the heightened protections provided in this section. The first page and individual pages of a document determined in good faith to include Highly Confidential Information must be marked by a stamp that reads:

"HIGHLY CONFIDENTIAL"

Placing a "Highly Confidential" stamp on the first page of a document indicates only that one or more pages contain Highly Confidential Information and will not serve to protect the entire contents of a multi-page document. Each page that contains Highly Confidential Information must be marked separately to indicate Highly Confidential Information, even where that information has been redacted. The unredacted paper versions of each page containing Highly Confidential Information, and provided under seal, should be submitted on paper distinct in color from non-confidential information and "Confidential Information" described in Section 1 of this Protective Agreement. Highly Confidential Information provided in a computer-readable data file shall be so-labeled on the face of any disc containing the file and in any e-mail transmitting the file, and the data file itself shall be identified in a conspicuous manner as containing "Highly Confidential Information" to the extent reasonably practicable.

Parties seeking disclosure of Highly Confidential Information must designate the

1 person(s) to whom they would like the Highly Confidential Information disclosed in advance
2 of disclosure by the providing party. Such designation may occur through the submission of
3 Exhibit "B" of the non-disclosure agreement for Highly Confidential Information identified
4 in Section 1(d). Parties seeking disclosure of Highly Confidential Information shall not
5 designate more than: (1) a reasonable number of in-house attorneys who have direct
6 responsibility for matters relating to Highly Confidential Information; (2) a reasonable
7 number of in-house experts and employees who need access to the material to assist the party
8 in the proceedings; and, (3) a reasonable number of outside counsel and outside experts to
9 review materials marked as "Highly Confidential." The Exhibit "B" also shall describe in
10 detail the job duties or responsibilities of the person being designated to see Highly
11 Confidential Information and the person's role in the proceeding. Highly Confidential
12 Information may not be disclosed to persons engaged in the sale or marketing of products or
13 services on behalf of any party.

14 Any party providing either Confidential Information or Highly Confidential
15 Information may object to the designation of any individual as a person who may review
16 Confidential Information and/or Highly Confidential Information. Such objection shall be
17 made in writing to counsel submitting the challenged individual's Exhibit "A" or "B". Any
18 such objection must demonstrate good cause to exclude the challenged individual from the
19 review of the Confidential Information or Highly Confidential Information. Written response
20 to any objection shall be made within two (2) business days after receipt of an objection. If,
21 after receiving a written response to a party's objection, the objecting party still objects to
22 disclosure of either Confidential Information or Highly Confidential Information to the
23 challenged individual, the Commission shall determine whether Confidential Information or
24 Highly Confidential Information must be disclosed to the challenged individual.

25 Copies of Highly Confidential Information may be provided to the in-house attorneys,
26 in-house experts, outside counsel and outside experts who have signed Exhibit "B".

27 Persons authorized to review the Highly Confidential Information will maintain the
28 documents and any notes reflecting their contents in a secure location to which only

1 designated counsel and experts have access. No additional copies will be made, except for
2 use during hearings and then such disclosure and copies shall be subject to the provisions of
3 Section 5. Any testimony or exhibits prepared that reflect Highly Confidential Information
4 must be maintained in the secure location until removed to the hearing room for production
5 under seal. Unless specifically addressed in this section, all other sections of this Protective
6 Agreement applicable to Confidential Information also apply to Highly Confidential
7 Information.

8 **4. Objections to Admissibility.** The furnishing of any document, data, study or
9 other materials pursuant to this Protective Agreement shall in no way limit the right of the
10 providing party to object to its relevance or admissibility in proceedings before the
11 Commission or any judicial body.

12 **5. Disclosure of Information to the Public.** The Confidential Information
13 provided pursuant to this Agreement, including any Highly Confidential Information, shall
14 not be disclosed to any person not authorized to review it under the terms of this Agreement,
15 nor shall it be made a part of the public record in the above captioned dockets, or in any other
16 administrative or legal proceeding, unless receiving party provides producing party with five
17 (5) business days written notice that it challenges the producing party's designation of the
18 information as legally protected and intends that certain, specifically identified information
19 shall be subject to wider dissemination or public disclosure. Upon the expiration of five (5)
20 business days from the date such written notice is received by producing party, any
21 Confidential Information specifically identified in the notice as subject to public disclosure
22 may become part of the public record in this docket, unless producing party initiates a
23 protective proceeding under the terms of Paragraph 6 to this Agreement.

24 **6. Protective Proceedings to Prevent Disclosure to the Public.** In the event that
25 producing party seeks to prevent disclosure of Confidential Information, including Highly
26 Confidential Information, pursuant to Paragraph 5 above, producing party shall file within
27 five (5) business days of receiving written notice of the receiving party's intent to disclose
28 such information, a motion presenting the specific grounds upon which it claims that the

1 Confidential Information should not be disclosed or should not be made a part of the public
2 record. The receiving party shall have an opportunity to respond to the motion. The motion
3 may be ruled upon by either the Commission or an assigned ALJ. The producing party may
4 provide to the Commission or the ALJ, the Confidential Information referenced in the motion
5 without waiver of its position that the information should be kept confidential under the terms
6 of this Agreement. Any Confidential Information so provided shall be filed and kept under
7 seal for the purpose of permitting inspection by the Commission or the ALJ before ruling on
8 the motion.

9 Notwithstanding any determination by the ALJ or the Commission that any
10 Confidential Information provided pursuant to this Agreement should be made a part of the
11 public record or otherwise disclosed, such disclosure shall not occur for a period of five (5)
12 business days after such determination so that the providing party may seek judicial relief
13 from the ALJ's or the Commission's decision. Upon expiration of the five (5) day period, the
14 Commission may release the information to the public unless the producing party has
15 received a stay or determination from a court of competent jurisdiction that the Confidential
16 Information should not be disclosed.

17 7. (a) **Receipt into Evidence.** Provision is hereby made for receipt into
18 evidence in this proceeding materials claimed to be confidential in the following manner:

- 19 (1) Prior to the use of or substantive reference to any Confidential
20 Information or Highly Confidential Information, the parties
21 intending to use such Information shall make that intention known
22 to the providing party.
- 23 (2) The requesting party and the providing party shall make a good-
24 faith effort to reach an agreement so the Information can be used
25 in a manner which will not reveal its confidential or proprietary
26 nature.
- 27 (3) If such efforts fail, the providing party shall separately identify
28 which portions, if any, of the documents to be offered or

1 referenced shall be placed in a sealed record.

2 (4) Only one (1) copy of the documents designated by the providing
3 party to be placed in a sealed record shall be made.

4 (5) The copy of the documents to be placed in the sealed record shall
5 be tendered by counsel for the providing party to the Commission,
6 and maintained in accordance with the terms of this Agreement.

7 (b) **Seal.** While in the custody of the Commission, materials containing
8 Confidential Information shall be marked "CONFIDENTIAL – UNDER PROTECTIVE
9 AGREEMENT IN DOCKET NO. E-01345A-16-0036" and Highly Confidential Information
10 shall be marked "HIGHLY CONFIDENTIAL – USE RESTRICTED PER PROTECTIVE
11 AGREEMENT IN DOCKET NO. E-01345A-16-0036" and shall not be examined by any
12 person except under the conditions set forth in this Agreement.

13 (c) **In Camera Hearing.** Any Confidential Information or Highly
14 Confidential Information that must be orally disclosed to be placed in the sealed record in this
15 proceeding shall be offered in an in camera hearing, attended only by persons authorized to
16 have access to the information under this Agreement. Similarly, any cross-examination on or
17 substantive reference to Confidential Information or Highly Confidential Information (or that
18 portion of the record containing Confidential Information or Highly Confidential Information
19 or references thereto) shall be received in an in camera hearing, and shall be marked and
20 treated as provided herein.

21 (d) **Access to Record.** Access to sealed testimony, records and information
22 shall be limited to the ALJ, Commissioners, and their respective staffs, and persons who are
23 entitled to review Confidential Information or Highly Confidential Information pursuant to
24 Subsection 1(c) above and have signed an Exhibit "A" or "B", unless such information is
25 released from the restrictions of this Agreement either through agreement of the parties or
26 after notice to the parties and hearing, pursuant to the ruling of the ALJ, the order of the
27 Commission and/or final order of a court having final jurisdiction.

28 (e) **Appeal/Subsequent Proceedings.** Sealed portions of the record in the

1 proceedings may be forwarded to any court of competent jurisdiction for purposes of an
2 appeal, but under seal as designated herein for the information and use of the court. If a
3 portion of the record is forwarded to a court, the providing party shall be notified which
4 portion of the sealed record has been designated by the appealing party as necessary to the
5 record on appeal.

6 (f) **Return.** Unless otherwise ordered, Confidential Information and Highly
7 Confidential Information, including transcripts of any depositions to which a claim of
8 confidentiality is made, shall remain under seal, shall continue to be subject to the protective
9 requirements of this Agreement, and shall, at the providing party's discretion, be returned to
10 counsel for the providing party, or destroyed by the receiving party, within thirty (30) days
11 after final settlement or conclusion of the proceedings. If the providing party elects to have
12 Confidential Information or Highly Confidential Information destroyed rather than returned,
13 counsel for the receiving party shall verify in writing that the material has in fact been
14 destroyed.

15 8. **Use in Pleadings.** Where references to Confidential Information or Highly
16 Confidential Information in the sealed record or with the providing party is required in
17 pleadings, briefs, arguments or motions (except as provided in Section 6), it shall be by
18 citation of title or exhibit number or some other description that will not disclose the
19 substantive Confidential Information or Highly Confidential Information contained therein.
20 Any use of or substantive references to Confidential Information or Highly Confidential
21 Information shall be placed in a separate section of the pleading or brief and submitted to the
22 ALJ or the Commission under seal. This sealed section shall be served only on counsel of
23 record and parties of record who have signed the nondisclosure agreement set forth in Exhibit
24 "A" or "B". All of the restrictions afforded by this Agreement apply to materials prepared
25 and distributed under this section.

26 9. **Summary of Record.** If deemed necessary by the Commission, the providing
27 party shall prepare a written summary of the Confidential Information or Highly Confidential
28 Information referred to be placed on the public record.

1 **10. No Admission of Privileged or Confidential Status.** By agreeing to this
2 Agreement, neither EFCA nor any Party is admitting or agreeing that any of the materials or
3 communications designated as "Confidential" or "Highly Confidential" Information are,
4 either in fact or as a matter of law, a trade secret or of a proprietary, confidential or legally
5 protected nature.

6 **11. Designated Contacts.**

7 A. EFCA's designated contacts for written notice pertaining to this Agreement are:

8 Court S. Rich
9 Rose Law Group pc
10 7144 East Stetson Drive, Suite 300
11 Scottsdale, Arizona 85251
12 CRich@roselawgroup.com

13 B. APS's designated contacts for written notice pertaining to this Agreement are:

14 Linda J. Benally
15 Pinnacle West Capital Corporation
16 Law Department
17 400 North 5th Street, MS 8695
18 Phoenix, Arizona 85004
19 Linda.Benally@pinnaclewest.com

20 APS State Regulation and Compliance
21 Attn: Kerri Carnes
22 400 North 5th Street, MS 9712
23 Phoenix, Arizona 85004
24 Ratecase@aps.com

25 **12. Breach of Agreement.** Any Party, in any legal action or complaint it files in
26 any court alleging breach of this Agreement shall, at the written request of the Commission,
27 name the Arizona Corporation Commission as a Defendant therein.

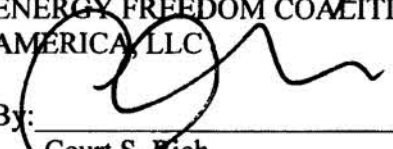
28 **13. Remedies.** The Parties acknowledge and agree that an exclusive remedy of
money damages would not be a sufficient remedy for any breach of this Agreement, and that
in addition to all other remedies to which the Producing Party may be entitled, each such
Producing Party may be entitled to: (a) apply to the ALJ or the Commission, as appropriate,
for sanctions against the Other Party and its legal counsel; and (b) specific performance

1 and/or injunctive or other relief as a remedy. Any equitable relief sought or secured
2 hereunder shall not bar recovery of other remedies available at law or in equity, including
3 money damages.

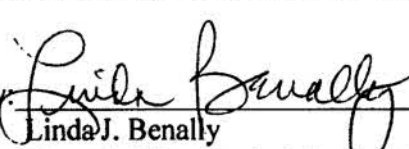
4 **14. Non-Termination.** The provisions of this Agreement shall not terminate at the
5 conclusion of this proceeding.

6 DATED this 7th day of November, 2016.

7 ENERGY FREEDOM COALITION OF
8 AMERICA, LLC

9 By: 
10 Court S. Rich
11 Rose Law Group pc
12 7144 East Stetson Drive, Suite 300
13 Scottsdale, Arizona 85251
14 Telephone: 480 505-3937
15 Facsimile: 480 505-3925

ARIZONA PUBLIC SERVICE COMPANY

By: 
Linda J. Benally
Pinnacle West Capital Corporation
Law Department
400 North 5th Street, MS 8695
Phoenix, Arizona 85004
Telephone: 602 250-3630
Facsimile: 602 250-3393

1 EXHIBIT "A"

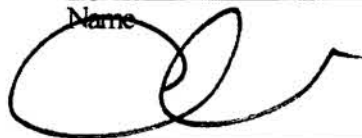
2 NONDISCLOSURE AGREEMENT

3 CONFIDENTIAL INFORMATION

4 I have read the foregoing Protective Agreement dated _____,
5 2016, IN THE MATTER OF THE APPLICATION OF ARIZONA PUBLIC SERVICE
6 COMPANY FOR A HEARING TO DETERMINE THE FAIR VALUE OF THE UTILITY
7 PROPERTY OF THE COMPANY FOR RATEMAKING PURPOSES, TO FIX A JUST
8 AND REASONABLE RATE OF RETURN THEREON, TO APPROVE RATE
9 SCHEDULES DESIGNED TO DEVELOP SUCH RETURN, Docket No. E-01345A-16-
10 0036, and agree to be bound by the terms and conditions of such Agreement.

11 Court Rich

12 Name

13 

14 Signature

15
16 Rose Law Group PC

17 Employer or Firm

18 7144 E. Stetson Dr., Ste 300
19 Scottsdale, AZ 85251

20 Business Address

21 Attorney for EFCA

22 Position or relationship with the Party

23
24 11/10/16

25 Date

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EXHIBIT "B"

NONDISCLOSURE AGREEMENT

HIGHLY CONFIDENTIAL INFORMATION

I have read the foregoing Protective Agreement dated _____,
2016, IN THE MATTER OF THE APPLICATION OF ARIZONA PUBLIC SERVICE
COMPANY FOR A HEARING TO DETERMINE THE FAIR VALUE OF THE UTILITY
PROPERTY OF THE COMPANY FOR RATEMAKING PURPOSES, TO FIX A JUST
AND REASONABLE RATE OF RETURN THEREON, TO APPROVE RATE
SCHEDULES DESIGNED TO DEVELOP SUCH RETURN, Docket No. E-01345A-16-
0036, and agree to be bound by the terms and conditions of such Agreement.

Court Rich

Name



Signature

Rose Law Group PC

Employer or Firm

7144 E. Stetson Dr.; Ste 300
Scottsdale, AZ 85261

Business Address

Attorney for EFCA

Position or relationship with the Party

11/10/16

Date